

State Board of Equalization

**OPERATIONS MEMO**

For Public Release

No. : 1118  
Date : January 10, 2005  
Revised : October 31, 2008

**SUBJECT: Appeals Procedures**

**I. GENERAL**

The purpose of this operations memo is to provide appeals procedures to follow after a Notice of Determination has been mailed to a taxpayer or feepayer, and a petition for redetermination, administrative protest (formerly, late protest), or claim for refund (appeal) has been acknowledged.

As used in this operations memo:

1. *Taxpayer* means a taxpayer or a feepayer, claimant or petitioner, as applicable.
2. *Department* means the Sales and Use Tax Department, the Property and Special Taxes Department, or the Legal Department's Investigations Division as applicable.
3. *Office* means the Sales and Use Tax Department's district offices or the Property and Special Taxes Department's headquarters or field staff groups in the Environmental Fees Division, Excise Taxes Division, Fuel Taxes Division, Timber Tax Section, or the Legal Department's Investigations Division, as applicable.
4. *Petitions* means the Sales and Use Tax Department's Petitions Section or the Property and Special Taxes Department's Environmental Fees Division's Audit Section, Excise Taxes Division's Refund and Petition Group, Fuel Taxes Division's Petition Group, Investigations Division or Timber Tax Section, as applicable.
5. *Refunds* means the Sales and Use Tax Department's Audit Determination and Refund Section or the Property and Special Taxes Department's Environmental Fees Division's Audit Unit, Excise Taxes Division's Refund and Petition Group, Fuel Taxes Division's Refund Group, Investigations Division or Timber Tax Section, as applicable.

**II. PROCEDURES**

The Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5000 et seq.) set forth formal appeals procedures that all parties must follow during the appeals process. Prior to the issuance of a Notice of Determination, Board staff can reference Audit Manual Chapter 2, *Preparation of Field Audit Reports*, and Publication 76, *Audits*, for specific procedures regarding disputed audit findings. In addition, Operations Memo 1119, *Claims for Refund Hearing Procedures*, covers the appeals procedures on claims for refund unrelated to a petitioned audit determination.

The Legal Department's Appeals Division's responsibilities include conducting appeals conferences and issuing written decisions and recommendations on petitions for redetermination, claims for refund, administrative protests, and similar requests for review of Department actions resulting from the various taxes and fees administered by the Board. The responsibilities also include preparing Board hearing summaries, post-hearing analyses and Notices of Board Decision where applicable.

The appeals process is segregated into several phases. Once an appeal is acknowledged by Petitions or Refunds, an appeals case is established in the Board's Integrated Revenue Information System (IRIS). Phase status codes are used to monitor appeals cases in the Board's IRIS system. Generally, phase status codes are categorized as A, B, C, D, or E:

- A) Initial processing and summary preparation for an appeals conference or Pre-Appeals Conference Phase
- B) Appeals Conference and Decision and Recommendation
- C) Board Hearing
- D) Requests for Rehearing
- E) Appeals Case Closure

Chapter 2 of the Rules for Tax Appeals contains formal appeals procedures that apply to appeals prior to the Board hearing phase. Chapter 5 of the Rules for Tax Appeals contains formal appeals procedures that apply to appeals during the Board hearing and request for rehearing phases.

A. Pre-Appeals Conference Phase

Generally, the taxpayer has thirty (30) days from the date the Notice of Determination is issued to file a petition for redetermination. Instructions for filing petitions for redetermination are included on the taxpayer's copy of the Notice of Determination. The taxpayer may, of course, also file a claim for refund with respect to any payment made toward the determination (the Board will not act on the claim until all of the determined tax has been paid). When a petition, application for administrative hearing, or claim for refund is received in the office, the original documents (including the envelope) should be date stamped and immediately forwarded to Petitions or, in the case of a refund, to Refunds for acknowledgment.

However, a petition for redetermination of a Notice of Jeopardy Determination must be filed within 10 days after the service on the taxpayer of the Notice of Jeopardy Determination. That is, within 10 days of service on a taxpayer of a Notice of Jeopardy Determination, the taxpayer must pay the amount due, or file a petition for redetermination and post a deposit with the Board, in the prescribed amount for security. The petition for redetermination must be in writing and state the specific grounds upon which it is founded. Within 30 days of service of a Notice of Jeopardy Determination, the taxpayer may also apply for an administrative hearing for one or more purposes stated in the Revenue and Taxation Code section 6538.5. However, such an application does *not* operate as a stay of collection activities, except for the sale of property seized after issuance of the Notice of Jeopardy Determination.

*Office Investigation*

Once the petition/claim for refund is received, acknowledged, and entered in the IRIS Appeals subsystem for tracking purposes, a petition or claim file is established by Petitions or Refunds. If the responsible office has not prepared a Report of Discussion of Audit Findings (BOE-836-A) or the report does not fully address the taxpayer's contentions, the petition/claim for refund will be returned to the responsible office for further investigation and comments. The new or revised Report of Discussion of Audit Findings and the audit working papers should be returned to Petitions or Refunds for further processing and analysis. The audit findings will be evaluated for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or Board memorandum opinions which may affect the audit or investigation findings. (See Cal. Code Regs., tit. 18, § 5218.)

If the information provided is considered incomplete, Petitions or Refunds will contact the taxpayer or the responsible office to obtain whatever additional information is necessary. On occasion, the audit working papers will be returned to the responsible office for additional fieldwork and/or contact with the taxpayer in an attempt to resolve the petition/claim.

*Other Investigations*

Although most determinations are the result of Board field audits, other types of determinations may result from the following:

1. Compliance assessments (e.g. for failure to file returns)
2. Review of returns filed (errors on returns)
3. Dual determinations
4. Corporate officer liability
5. Notice of successor liability
6. Field billing orders
7. Other Board assessed liabilities resulting in a Notice of Determination

In these instances, the same general appeals procedure guidelines apply. Once the appeal is received in headquarters, it will be acknowledged, entered in the IRIS Appeals subsystem for tracking purposes, and a petition or claim file established. The petition or claim for refund will be forwarded to the originating unit or responsible unit to contact the taxpayer and to investigate the taxpayer's appeal and any newly submitted documentation. After further investigation and discussion with the taxpayer(s) is completed, the new or revised report is completed to document the items and amounts in dispute, the Department's position, the taxpayer's contentions, staff's recommendations, and whether or not the taxpayer requests an appeals conference and/or Board hearing. The report should be prepared in a format similar to the format found in the Report of Discussion of Audit Findings and be reviewed and signed by the appropriate supervisor. Once completed, the report should be returned to Petitions or Refunds for further processing and analysis. The findings will be evaluated for consistency, adequacy of procedures, proper application of law, and consideration of any recent law changes or

Board memorandum opinions. If the information provided by the taxpayer is considered incomplete, the originating unit will be contacted by Petitions or Refunds to obtain whatever additional information is necessary.

### *Summary Analysis*

If the petition or claim cannot be resolved, the investigation and/or reaudit findings are presented to the taxpayer. If the taxpayer has requested an appeals conference or Board hearing, the petition or claim case will proceed to an appeals conference (except for claims where there is specific reason to deny an appeals conference or Board hearing, such as where the claimant already had a hearing on the same issue and there are no new facts or arguments). For refund claims where additional documents are requested, regardless of whether or not they are provided, the taxpayer must reaffirm their request for an appeals conference or Board hearing. A Summary Analysis is a written summary which contains the petitioner's contentions regarding the notice of determination or notice of deficiency assessment, the position of the Department that issued the notice and the reasons Board staff from Petitions or Refunds believes that the Department's position should be sustained in whole or in part. (Cal. Code Regs., tit. 18, § 5218.) Petitions will prepare the Summary Analysis if the case involves a petition or a petition with a related claim for refund. If the case involves only a claim for refund, the Summary Analysis will be prepared by Refunds.

The Summary Analysis is primarily prepared from information taken from the "Discussion of Audit Findings" prepared by the auditor and the "Report of Discussion of Audit Findings" prepared by the District Principal Auditor (DPA) in the Sales and Use Tax Department, Investigations Division or the Division Principal Auditor (DPA) in the Property and Special Taxes Department. It is imperative these reports are as complete as possible, clearly explaining the taxpayer's contentions, the arguments supporting these contentions, and the staffs' position relating to those contentions. Once the Summary Analysis is prepared, the entire petition file or claim for refund file is forwarded to the Case Management section of the Board Proceedings Division to schedule an appeals conference with the Appeals Division.

Any written communications between the taxpayer, Petitions, Refunds, and the Appeals Division should be copied to all parties. Written communications from the Department to the taxpayer should include a statement requesting the taxpayer to contact the Board in writing as soon as possible if the taxpayer believes the facts and description of business activities set forth by the Department in the Summary Analysis are erroneous or require further explanation.

### **B. Appeals Conference and Decision and Recommendation Phase**

Board Proceedings staff will contact the taxpayer to verify and update the taxpayer's contact information and inquire as to whether the taxpayer would prefer that the appeals conference be held at a specific Board office that is convenient for the taxpayer. Unless the taxpayer indicates another preference, the appeals conference will be held in the

Board office that conducted the taxpayer's audit or recommended denial of the taxpayer's claim for refund. (Cal. Code Regs., tit. 18, § 5260.)

When the Department issues more than one responsible person determination under Revenue and Taxation Code section 6829 for the same corporate or LLC liability, each such person appealing the determination may not be able to specify the location for his or her appeals conference because the same conference holder should hold all appeals conferences related to the same corporate or LLC liability. When there is a conflict, the default location is usually the Board's district office to which the corporation's former principal place of business was assigned.

The DPA, or a designee, and the investigating auditor should attend the appeals conference. This is especially important for cases involving fraud. The presence and experience of the DPA provides valuable support for the auditor, lends credibility to the Department's position, and gives the Appeals Division conference holder an additional resource during an appeals conference. The duties of the Department representative at the appeals conferences have increased significantly and are further discussed in Audit Manual section 0207.08, Audit Policy and Management Guidelines section 2309.27 and Publication 76, *Audits*.

Staff from Petitions or Refunds will normally represent the Department at appeals conferences scheduled in Sacramento headquarters except for accounts in the Sacramento or Out-of-State districts. If the office believes that because of unusual circumstances it is desirable to have an office representative in attendance, a written request should be prepared and forwarded to one of the following, as applicable, for approval:

1. Chief of Field Operations Division, Equalization Districts 1 and 2 and the Out-of-State District
2. Chief of Field Operations Division, Equalization Districts 3 and 4 and Centralized Collection Section
3. Chief of the Excise Taxes Division
4. Chief of the Fuel Taxes Division
5. Chief of the Investigations Division
6. Chief of the Environmental Fees Division

Also, based on its review of the issues involved in a specific case, Petitions or Refunds may request that an office representative attend the conference in Sacramento. This request is subject to approval by the respective Chief, as noted above.

#### *Submission of Additional Documents*

Either the taxpayer or the applicable Department may submit additional documents to the Appeals Division to support their findings at any time before or during the appeals conference. When possible, such documentation should be submitted within 10 days of receipt of a Notice of Appeals Conference.

If, during the appeals conference, a party requests additional time to submit additional written arguments and/or documents, the conference holder may grant that party 15 days after the appeals conference, or 30 days with sufficient justification, to submit such arguments or documentation. If the additional time is granted, any party may submit a response to the additional arguments or documents within 15 days. (Cal. Code Regs., tit. 18, § 5264.) The conference holder may not grant any further extension of time for the submission of additional arguments or documents without obtaining the approval of the Assistant Chief Counsel of the Appeals Division (or his or her designee).

Once the appeals conference is concluded, the petition or claim will be taken under consideration by the Appeals Division and a Decision and Recommendation (D&R) will be issued, generally within 90 days after the conference or within 90 days after the submission of any additional documents. (Cal. Code Regs., tit. 18, § 5265.) The general recommendations of the Appeals Division will be to:

1. Deny the petition/claim in its entirety;
2. Grant the petition/claim in part and deny the petition/claim in part;
3. Grant the petition/claim in full; or
4. Conduct a reaudit or obtain additional information. (Cal. Code Regs., tit. 18, § 5266.)

The Appeals Division includes a cover letter to the taxpayer when issuing the D&R, with a copy to the Department. If the Appeals Division recommends that the petition/claim be denied in its entirety and the taxpayer has already requested a Board hearing, the taxpayer is advised that a hearing will be scheduled before the Board in accordance with the taxpayer's prior request, unless the taxpayer advises the Board Proceedings Division that the hearing is waived, in which case the matter will be processed in accordance with the recommendation of the Appeals Division. If the taxpayer has not requested a Board hearing, the taxpayer is advised they may request an oral hearing before the Board, and must do so within 30 days. Otherwise, the appeal will be processed in accordance with the D&R.

If the Appeals Division recommends that the petition/claim be denied in part and granted in part and the taxpayer has already requested a Board hearing, then the cover letter will advise the taxpayer that a hearing will be scheduled before the Board in accordance with the taxpayer's prior request, unless the taxpayer advises the Board Proceedings Division that the hearing is waived. The letter advises further that if the taxpayer waives the hearing, the matter will be processed in accordance with the recommendation of the Appeals Division unless the Department files a request for reconsideration ("RFR") or the Appeals Division otherwise issues a Supplemental D&R (SD&R) to clarify or correct the D&R.

If the Appeals Division recommends that the petition/claim be granted in its entirety, the taxpayer is advised that the appeal will be processed in accordance with that recommendation, unless the Department files an RFR or the Appeals Division otherwise issues a SD&R to clarify or correct the D&R.

If the Appeals Division recommends that the Department perform a reaudit, then the letter asks the taxpayer to cooperate with the Department during the reaudit and advises the taxpayer the Appeals Division will explain the taxpayer's options for appeal when the reaudit is completed.

Although not generally noted on the cover letter sent with the D&R, except as indicated above, the taxpayer or the Department may also submit an RFR within 30 days of the issuance of the D&R, in which case the Appeals Division will issue a SD&R after giving the other party the opportunity to respond. The Appeals Division may also issue an SD&R on its own initiative to clarify or correct the D&R. This includes situations where a party submits an RFR more than 30 days after the D&R was issued. Such a request is *not* automatically rejected as being untimely. Rather, if the Appeals Division decides that the request warrants a response, it will issue an SD&R, but the Rules for Tax Appeals do not *require* that it do so. The general recommendations (and cover letter) are the same for a SD&R as for a D&R, and the SD&R may affirm the recommendation in the D&R or change it. (Cal. Code Regs. tit. 18 § 5266.)

#### *Reaudit Recommendations*

If the Department disagrees with the recommendation of the Appeals Division that a reaudit be conducted, the Department may submit an RFR prior to conducting the reaudit. The Chief of the Headquarters Operations Division, Chief of the Excise Taxes Division, Chief of the Fuel Taxes Division, Chief of the Investigation Division, or Chief of the Environmental Fees Division, as applicable, should be notified immediately in cases where Department staff questions the conclusions reached in the D&R or SD&R. If the applicable chief agrees that an RFR should be submitted, he or she will submit it.

Reaudits requiring minimal adjustments will be completed in headquarters by Petitions or, for claims for refund, Refunds.

#### *Office Reaudits*

If the completion of a reaudit requires staff involvement to review additional records to be provided by the taxpayer, the office or unit of account will be contacted. Reaudits should be considered priority assignments. To assist in the timely completion of a reaudit as recommended by the D&R, Petitions or Refunds will return the audit working papers to the respective office as soon as possible.

Within 10 days of receiving the audit working papers, the auditor in the office will contact the taxpayer by telephone to request an appointment to review the records identified in the D&R. Unless the telephone call results in an appointment, the auditor will send a letter to inform the taxpayer that the taxpayer has 10 days to respond to the Department's request for an appointment to review records. If the taxpayer fails to respond to the letter after the 10<sup>th</sup> day, the auditor will send a second letter to the taxpayer. The second letter should be sent within one week after the expiration of the initial 10-day period. This letter will inform the taxpayer that unless the taxpayer

provides the requested records within one week from the date of the letter, the case will be returned to the Appeals Division without adjustments.

If the taxpayer fails to respond to both letters issued by the auditor, the DPA will send a memorandum to the Appeals Division. The taxpayer must be copied on this memorandum. The memorandum will state that as a result of the taxpayer's failure to provide the necessary records, the Department is returning the case to the Appeals Division without adjustments. The Appeals Division will then review the situation and, if it agrees that no further adjustment is warranted, will send the taxpayer an options letter that explains the taxpayer's choices for further appeal. Thereafter, if the case proceeds to a Board hearing, the hearing summary will note that the recommended reaudit was not performed because the taxpayer failed to provide the requested records.

If the taxpayer timely responds to the telephone call or letter(s), the Department will review the taxpayer's records and conduct the reaudit in a manner that will ensure the report is transmitted to headquarters within 90 days from the date the records are provided. The 90-day time frame includes the time required to: provide the taxpayer copies of the reaudit; hold an exit conference with the taxpayer (which may include a meeting with the taxpayer, auditor, the auditor's supervisor and/or the DPA); and document any remaining contentions.

The time frames set forth above may be extended with the approval of one of the following, as applicable:

1. Chief of Field Operations Division, Equalization Districts 1 and 2 and the Out-of-State District,
2. Chief of Field Operations Division, Equalization Districts 3 and 4, and Centralized Collection Section,
3. Chief of the Excise Taxes Division,
4. Chief of the Fuel Taxes Division,
5. Chief of the Investigation Division,
6. Chief of the Environmental Fees Division or
7. Their designee.

Upon completion of the reaudit, copies of the reaudit report and the audit working papers must be sent to Refunds. Refunds will update the audit interest calculation and forward the reaudit report and the audit working papers to Petitions for further processing, if necessary. Whether the taxpayer agrees or disagrees with the reaudit results, the office must send copies of the reaudit report and audit workpapers to the taxpayer. If the taxpayer disagrees with the reaudit results, the office must send or include a report fully explaining the taxpayer's contentions regarding each non-concurred item and the staff's position on each issue. The taxpayer may agree that the reaudit was conducted in accordance with the recommendation of the Appeals Division but disagree with the end result because the taxpayer disagrees with the recommendation, agree with the recommendation but disagree that the reaudit was conducted in accordance with the recommendation. Accordingly, a simple statement that the taxpayer agrees or disagrees with the reaudit does not adequately explain the taxpayer's position. Rather, the reaudit



report should be explicit as to the nature of the taxpayer's agreement or disagreement with the reaudit.

Petitions or Refunds will incorporate the reaudit report into the petition/claim file. The file, and audit workpapers in the case of taxpayer disagreement, will then be sent to the appeals conference holder. The appeals conference holder will review the file to ensure the reaudit was completed in accordance with the D&R. If it was completed in accordance with the D&R, a letter will be sent to the taxpayer, copied to the Department, briefly noting the results of the reaudit and explaining the further options for appeal, which are essentially identical to those discussed above for the cover letter sent with the D&R (the options depend on whether the end result is a full grant, a partial grant and partial denial, or a full denial, and whether the taxpayer has already requested a Board hearing). A BOE-89-G, *Reaudit Transmittal Letter – Adjustment Resulted from Appeals Staff's D&R*, is sent to the taxpayer by the office at the conclusion of a reaudit. The BOE-89-G covers the situation where the reaudit is initiated as a result of an Appeals Division conference.

#### *Department Requests for Reconsideration*

The Chief of the Headquarters Operations Division, Chief of the Excise Taxes Division, Chief of the Fuel Taxes Division, Chief of the Investigation Division or Chief of the Environmental Fees Division, is responsible for evaluating D&Rs and SD&Rs to determine whether a RFR should be filed. If a request will be submitted, the appropriate office will prepare the RFR providing the reasons the respective Department believes the D&R or SD&R is incorrect. If the office believes a D&R or SD&R should be questioned, the DPA should notify the appropriate Chief as soon as possible.

#### C. Board Hearing

The taxpayer and any other state agency represented at the appeals conference may request a hearing before the Board. If such a request is received, the case will be scheduled for a Board hearing. (The Department may not request a Board hearing.) The Appeals Division will prepare a Board Hearing Summary for use by the Board Members, their staff and the parties to the hearing. (Cal. Code Regs., tit. 18, § 5523.3.) This summary will set forth the contentions of both parties and include copies of the Appeals Division's D&R and any SD&R.

At the Board hearing, the Appeals Division representative will summarize the issues. The taxpayer will generally present his or her case. The Department, through either the Sales and Use Tax Hearing Representative, an attorney from the Tax and Fee Programs Division, or an attorney from Legal Department representing the Investigations Division, together with the Department's Deputy Director or designee and the Assistant Chief Counsel of the Tax and Fee Programs Division or designee, will explain the Department's position. The Deputy Director or designee and the Assistant Chief Counsel of the Tax and Fee Programs Division or designee will respond to administrative, management, or other Board concerns.

In general, the Appeals Division representative plays a neutral role. The other two parties present their cases and, if appropriate, point out the weaknesses of the other party's arguments. Attorneys in the Board's Tax and Fee Programs Division represent the Department as its legal counsel. Requests by the Board Members for interpretation of law may be directed to either party's representative or to the Appeals Division representative.

At the conclusion of the hearing, the Board may make an immediate decision such as ordering the case redetermined without adjustment or granting the petition/claim in full or in part. The Board may also take the matter under submission for a decision at the end of that hearing day or for a decision at a later time. (Cal. Code Regs., tit. 18, § 5551.) If the case is taken under submission, the Board may refer the matter to the Appeals Division for further review and recommendation. For example, the Board may allow the taxpayer time to submit additional documentation or argument, the Department time to respond, and the Appeals Division time to review each party's submission and make its recommendation to the Board. In most such circumstances, the taxpayer, the Department, and the Appeals Division are each allowed 30 days, which is why this process is commonly called "30/30/30". When the Board allows the parties additional time to make submissions, or otherwise takes the matter under submission without making a decision on the day of the hearing, the matter is returned for Board decision at a later Board meeting on the Tax Program Nonappearance Matters Adjudicatory calendar as a Legal Appeals Matter.

Following the Board's decision on a petition/claim, a notice of the Board's decision is mailed to the taxpayer, generally within 45 days from the date of the Board's decision. However, if the Board's decision denied a claim for refund in whole, the notice is mailed within 30 days from the date of the Board's decision. The Board's decision becomes final 30 days from the date of the official notice of Board decision, unless a petition for rehearing is filed within that 30-day period. (Cal. Code Regs., tit. 18, § 5560.)

Closing notices, including Notices of Board Decision are mailed to the taxpayer by:

1. Sales and Use Tax Department's Petitions Section for petitions and administrative protests under the Sales and Use Tax Law
2. Sales and Use Tax Department's Audit Determination and Refund Section for claims for refund under the Sales and Use Tax Law
3. Environmental Fees Division's Audit Section
4. Excise Taxes Division's Refund and Petition Group
5. Fuel Taxes Division's Petition Group
6. Investigations Division
7. Timber Tax Section

Petition for Rehearing

The taxpayer has thirty (30) days from the date shown on the Notice of the Board Decision to file a petition for rehearing. Petitions for rehearing should be referred to the Board Proceedings Division. The petition for rehearing must:

1. Identify an irregularity in the Board's proceedings that prevented the fair consideration of the matter;
2. Identify an accident or surprise that occurred, which ordinary caution could not have prevented;
3. Identify newly discovered, relevant evidence, which the party requesting the rehearing could not have reasonably discovered and provided prior to the Board's decision; or
4. Demonstrate that there is insufficient evidence to justify the decision or the decision is contrary to law. (Cal. Code Regs., tit. 18, § 5561.)

D. Appeals Case Closure Phase

At the conclusion of the appeals process, notification of the closure of the petition/claim is mailed to the taxpayer (e.g. Notice of Redetermination, Denial of Claim for Refund). If the appeals case was presented to the Board for final action, then the notification will include the Board's decision rendered at that hearing.

### **III. APPEALS CASE WORKLOAD PRIORITY GUIDELINES**

The Rules for Tax Appeals set forth specific procedures and deadlines that all parties must adhere to after an appeal is filed. For this reason, the Department's highest level of priority is given to cases scheduled for or previously heard by the elected Board Members. The next highest priority is given to cases where a Decision and Recommendation has already been issued, and finally, by appeals cases pending the scheduling of an appeals conference. Appeals cases have priority over routine Department assignments.

### **IV. OBSOLESCENCE**

This operations memo will become obsolete when its provisions are incorporated into the Audit Manual.

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Distribution: 1-D